IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1447 OF 2003

Shrikrishna G. Hadkar. .. Petitioner.

vs.

Apollo Textile Mills

National Textile Mills

(SM) Limited & Ors. .. Respondents.

Ms. Hutoxi Tavadia for petitioner.

Mrs. Meena Doshi for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 20th April, 2006.

P.C.:

. The present writ petition is filed challenging the order of the Presiding Officer dated 18.2.2002 and the order passed by the Industrial Court in Revision Application No. 40 of 2002 dated 12/11/2002. Some of the material facts of the present case briefly enumerated are as under:-

2. The petitioner was in the employment of the respondent company since 1974 and his services were terminated on 26.4.1997. The charge which was

framed against him was that on 28.10.1996 the petitioner was on duty in the grain shop department and while discharging duty gave excess ration to one Sadashiv Narsu. When said Sadashiv Narsu reached the mill gate along with ration the watchman stopped him and he was checked. The ration taken by him was measured and it was found that there was 201.50 kgs in excess whereas Narsu was having gate passes only for 18 kgs wheat dated 25.10.1996 and 57 kgs., wheat dated 28.10.1996. The explanation given by the workman was that the said Mr. Narsu demanded 200 kgs. of wheat and he produced 7 to 8 small unit cards and one of them was big units. He has stated that accordingly he made cash memo and handed over 100 kgs of wheat and decided to make cash memo for balance 100 kgs of wheat as per the availability of the card holders. He also gave his apology. It seems that thereafter a charge sheet was issued on 30.10.1996 and the same was served upon the petitioner. It is the case of the respondent that the petitioner has admitted the charge by a letter dated 30.10.1996. However, after the enquiry the said petitioner’s services were terminated.

3. The said termination order was challenged by filing a complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the MRTU & PULP Act)

being Complaint (ULP) No. 23 of 1997 under item 1 of Schedule IV of the said Act. It was contended that the dismissal of the petitioner is by way of victimisation and, therefore, the said order of termination should be set aside. After the enquiry, the Labour Court gave a finding that the enquiry is vitiated as not fair and proper. The Labour Court thereafter gave an opportunity to the respondent company to lead evidence to prove their charges before the Court. Both the parties have led fresh evidence before the Labour Court and after considering the evidence and the material on record the Labour Court has come to the conclusion that the case of the petitioner has been proved. While giving the aforesaid finding the Labour Court has relied upon the admission of the petitioner himself by way of a letter dated 30.10.1996 as well as the panchanama prepared when said Narsu was examined and excess quantity of wheat was found. The respondent company has also led the oral evidence before the Labour Court. After considering the aforesaid evidence the Labour Court has come to the conclusion that the charge against the petitioner has been established.

4. Being aggrieved by the said order, the petitioner preferred a revision application under Section 44 of the MRTU & PULP Act and by an order and judgment dated 12/11/2002 the Industrial Court

has also dismissed the said revision. The Industrial Court has come to the conclusion that the order under revision is not perverse and there is sufficient evidence on record to establish that the petitioner has misappropriated the amount. It has also given a finding that on the inspection being carried out in fact more amount was found in cash box than can be accounted for. The Industrial Court has accordingly dismissed the said revision application. However, while passing the operative order the Industrial Court has set aside the order of cost which was imposed on the petitioner and only dismissed the compliant.

5. The learned counsel appearing for the petitioner has taken me through the oral evidence of all the witnesses as well as the documentary evidence which is at pages 166 to 170 of the paper book in the form of visit book and the complaint book. The learned counsel has submitted that the charge against the petitioner of misappropriation of ration or permitting withdrawal of excess ration is not proved on the evidence on record. The learned counsel for the petitioner has submitted that once enquiry proceedings having set aside it was the duty of the respondent to establish the said charge by leading fresh evidence in Court and the respondent having failed to do so the petitioner could not have been terminated from his services. The learned

counsel for the petitioner while analysing the evidence of the watchman which has been annexed to the petition has submitted that the watchman has in his evidence stated in the cross-examinatino that there were two gunny bags which were totally destroyed and it has been submitted by the learned counsel for the petitioner that there was a shortage of ration on physical verification was due to the destruction of two gunny bags of grains. However, on perusal of the evidence it is found that in the cross-examination he has in fact denied that two gunny bags were destroyed due to insects. While placing reliance on the said evidence further, the learned counsel for the petitioner has contended that the evidence of the watchmen shows that he did not go and personally verify the ration in the ration shop and, therefore, the evidence of the watchman was required to be discarded. Similarly, the learned counsel for the petitioner has also commented on the evidence of the respondent and has contended that it is not trustworthy to punish the petitioner by way of dismissal from service.

6. I am of the opinion that in writ jurisdiction under Article 226 of the Constitution of India it is not permissible to reappreciate the evidence. On the facts of the present case it is established that there is an admission on the part of the workman by letter dated 30.10.1996 that he

has committed the said misconduct by permitting excess withdrawal of the ration from the ration shop. Though the petitioner has contended that the said letter has been obtained by force but on the perusal of the evidence of the petitioner there is not even a statement made that the said letter dated 30.10.1996 was forcibly obtained. It has been further submitted that once the enquiry conducted by the respondent has been set aside then the said letter cannot be read in evidence before the Labour Court where the fresh evidence is led. I am not inclined to accept either of the submissions made by the learned counsel for the petitioner. Firstly because the letter dated 30.10.1996 is on record and it cannot be that when the respondent employer is permitted to lead further evidence he is not entitled to rely upon the letter which was there before the enquiry officer. The very same material can be relied upon by the respondent employer while leading evidence afresh before the Labour Court so as to establish afresh the charges which are levelled against the petitioner employee. Secondly, it was the duty of the petitioner to dispute the veracity of the said letter dated 30.10.1996 or ought to have led evidence to establish that the same was obtained by force or coercion. Having not done the said exercise, in my opinion, the findings given by the Labour Court in para 10 of the said judgment are not required to be interfered with. I

do not find any perversity in the order passed by the Labour Court. In so far as the contention that the visit book and complaint book does not indicate any shortage of the said ration material, I am of the view that the Labour Court was right in holding that the said visit book or complaint book does not indicate that on the visit to the ration shop there was actual, physical verification of the ration in the said shop. The visit book does show that the ration officer had visited the shop on that date and recorded the information furnished to him in the visit book however, there is no entry indicating any actual physical verification of ration in the said shop premises by the rationing officer. In so far as complaint book is concerned, it only indicates that there is no complaint lodged by the ration card holder. In my opinion either of the aforesaid documentary evidence establish the innocence of the petitioner. In that light of the matter, there is no substance in the present petition. Accordingly, the petition fails and the same is dismissed. There shall be no order as to costs.